

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

RÉANNA KELLY, SUNSHINE BONNET, LAURA BLAKE, ALEXANDRA CALFE, SHANNON PACI, SOLEIL MEISES, DOMINIQUE WILLIAMS, ASHLEY MORA, AMBERLY ALMONTE, JANICE CASSANOVA, MERCEDES ORTIZ, MYALI SANCHEZ, KATHERINE MENDEZ, FATIMA COLLINS, NAJWA ISMAIL, and LEANDRA ROYER,

ORDER
22-CV-0226 (MKB) (CLP)

Plaintiffs,

v.

21 GROUP INC d/b/a SHOW PALACE
GENTLEMEN'S CLUB, ESTATE OF LAMPROS
MOUMOURIS, DOE MANAGERS 1–3, and
DOES 4–10,

Defendants.

MARGO K. BRODIE, United States District Judge:

Plaintiff RéAnna Kelly commenced the above-captioned action on January 14, 2022 against Defendants 21 Group Inc., doing business as Show Palace Gentlemen's club ("21 Group"), Lampros Moumouris, Doe Managers 1–3, and Does 4–10, alleging, among other things, that they failed to pay her minimum wages for hours worked and failed to pay proper tips to tipped employees, in violation of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* ("FLSA"). (Compl., Docket Entry No. 1.) On March 15, 2022, Kelly and additional Plaintiffs Sunshine Bonnet, Laura Blake, Alexandra Calfe, Shannon Paci, Soleil Meises, Dominique Williams, Ashley Mora, Amberly Almonte, Janice Cassanova, Mercedes Ortiz, Myali Sanchez, Katherine Mendez, Fatima Collins, Najwa Ismail and Leandra Royer filed an Amended Complaint against Defendants, alleging the FLSA claims and also alleging violations of the New

York Labor Law, §§ 190 *et seq.* and 650 *et. seq.* (“NYLL”), among other things.¹ (Am. Compl., Docket Entry No. 22.) On April 28, 2022, Defendants filed their Answer to the Amended Complaint. (Answer, Docket Entry No. 28.)

Currently before the Court is a report and recommendation issued by Magistrate Judge Cheryl L. Pollak on April 17, 2024, recommending that the Court dismiss certain non-responsive Plaintiffs from this action for failure to prosecute (“R&R”). (R&R, Docket Entry No. 74.) For the reasons set forth below, the Court adopts the R&R and dismisses Plaintiffs Myali Sanchez, Dominique Williams, Ashley Mora, Katerine Mendez, Amberly Almonte, Janice Cassanova, Leandra Royer, Laura Blake, Alexandra Calfe, Alyssa Cruz, and Soleil Meises for failure to prosecute.

I. Procedural background

On December 20, 2023, counsel for Plaintiffs, Carpenter & Zuckerman (“Counsel”) filed a motion to withdraw from its representation of Plaintiffs Myali Sanchez, Dominique Williams, Ashley Mora, Katerine Mendez, Amberly Almonte, Janice Cassanova, Leandra Royer, Laura Blake, Alexandra Calfe, Alyssa Cruz, and Soleil Meises because they were unresponsive to Counsel (the “Unresponsive Plaintiffs”). (Mot. to Withdraw, Docket Entry No. 66.) Counsel contends that there has been a “substantial breakdown in communications . . . between the Unresponsive Plaintiffs and their attorneys of record,” since the Unresponsive Plaintiffs have “refused to communicate with counsel in any way” and have failed to “respond to any of the various emails, texts, phone calls, and letters from their attorneys.” (*Id.* ¶ 2.)

¹ In the Amended Complaint Plaintiffs sue the Estate of Lampros Moumoris rather than Lampros Moumoris. (Am. Compl.)

On January 5, 2024, Judge Pollak granted the motion to withdraw and directed Counsel to serve copies of the Order on the Unresponsive Plaintiffs at their last known addresses, and via their last known emails (the “January 2024 Order”). (Jan. 2024 Order 2, Docket Entry No. 68.) Judge Pollak also directed Counsel to file proof of service. (*Id.* at 2.) On March 8, 2024, Judge Pollak extended the Unresponsive Plaintiffs’ time to respond to April 1, 2024 (the “March 2024 Order”). (Mar. 2024 Order.) On April 1, 2024, Counsel filed the requisite proof of service. (Notice of Proof of Service 1, Docket Entry No. 73.) The Unresponsive Plaintiffs have not filed a letter with the Court or otherwise responded to the January 2024 or March 2024 Orders.

On April 17, 2024, Judge Pollak issued the R&R, recommending that the Court dismiss the Unresponsive Plaintiffs for failure to prosecute. (R&R.) No objections to the R&R have been filed and the time for doing so has passed.

II. Discussion

A district court reviewing a magistrate judge’s recommended ruling “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). “Where parties receive clear notice of the consequences, failure to timely object to a magistrate[] [judge’s] report and recommendation operates as a waiver of further judicial review of the magistrate[] [judge’s] decision.” *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (quoting *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002)); *see also Miller v. Brightstar Asia, Ltd.*, 43 F.4th 112, 120 (2d Cir. 2022) (“[T]his court has ‘adopted the rule that when a party fails to object timely to a magistrate[] [judge’s] recommended decision, it waives any right to further judicial review of that decision.’” (internal quotation marks omitted) (quoting *Wesolek v. Canadair Ltd.*, 838 F.2d 55, 58 (2d Cir. 1988))); *Phillips v. Long Island R.R. Co.*, 832 F. App’x 99, 100 (2d Cir. 2021) (observing the same rule); *Almonte v. Suffolk County*,

531 F. App'x 107, 109 (2d Cir. 2013) ("As a rule, a party's failure to object to any purported error or omission in a magistrate judge's report waives further judicial review of the point." (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Sepe v. N.Y. State Ins. Fund*, 466 F. App'x 49, 50 (2d Cir. 2012) ("Failure to object to a magistrate judge's report and recommendation within the prescribed time limit 'may operate as a waiver of any further judicial review of the decision, as long as the parties receive clear notice of the consequences of their failure to object.'") (first quoting *United States v. Male Juv. (95-CR-1074)*, 121 F.3d 34, 38 (2d Cir. 1997); and then citing *Thomas v. Arn*, 474 U.S. 140, 155 (1985)); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) ("[A] party waives appellate review of a decision in a magistrate judge's [r]eport and [r]ecommendation if the party fails to file timely objections designating the particular issue." (first citing *Cephas*, 328 F.3d at 107; and then citing *Mario*, 313 F.3d at 766)).

The Court has reviewed the unopposed R&R and, finding no clear error, adopts the R&R pursuant to 28 U.S.C. § 636(b)(1).

III. Conclusion

The Court dismisses the action as to Plaintiffs Myali Sanchez, Dominique Williams, Ashley Mora, Katerine Mendez, Amberly Almonte, Janice Cassanova, Leandra Royer, Laura Blake, Alexandra Calfe, Alyssa Cruz, and Soleil Meises for failure to prosecute.

Dated: May 29, 2024
Brooklyn, New York

SO ORDERED:

S/MKB
MARGO K. BRODIE
United States District Judge